

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION

PLEA HEARING

BEFORE THE HONORABLE L. STUART PLATT  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
By: Ms. Brandi Young  
400 W. Illinois Avenue, Suite 1200  
Midland, Texas 79701

For the Defendant: LAW OFFICE OF JASON LEACH  
By: Mr. Jason Leach  
3800 East 42nd Street, Suite 605  
Odessa, Texas 79762

Proceedings recorded by electronic sound recording,  
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1                   THE COURT: Be seated, please.

2                   Okay. I'm going to call this morning U.S. versus  
3                   Preston Savell and U.S. versus Joshua Bell,  
4                   MO-09-CR-179.

5                   For the Government?

6                   MS. YOUNG: Brandi Young on behalf of the  
7                   United States, your Honor.

8                   THE COURT: Good morning, Ms. Young.

9                   MR. ROGERS: Your Honor, David Rogers. I'm  
10                  here with Preston Savell.

11                  THE COURT: Mr. Rogers.

12                  MR. LEACH: Your Honor, my name's Jason  
13                  Leach, and I'm the attorney for Joshua Bell.

14                  THE COURT: Thank you, Mr. Leach,  
15                  Mr. Rogers.

16                  If you'd both raise your right hands, be sworn  
17                  by the Clerk.

18                  (Defendants sworn by the Court Clerk.)

19                  THE COURT: All right. If both of you would  
20                  just speak loudly into those microphones whenever we  
21                  ask you questions.

22                  Mr. Rogers, do you have any doubt as to your  
23                  client's competence to enter a guilty plea this  
24                  morning?

25                  MR. ROGERS: I do not, your Honor.

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1                   THE COURT: Mr. Leach, do you have any doubt  
2 as to your client's competence to enter a plea this  
3 morning?

4                   MR. LEACH: No, sir, your Honor.

5                   THE COURT: Ms. Young, does the Government  
6 have any information as to either of these Defendants,  
7 as to their competence?

8                   MS. YOUNG: We do not, your Honor.

9                   THE COURT: Thank you.

10                  Mr. Savell. That's you; right?

11                  DEFENDANT SAVELL: Yes, sir.

12                  THE COURT: And Mr. Bell?

13                  DEFENDANT BELL: Yes, sir.

14                  THE COURT: Okay. I'll try to keep you  
15 straight. If I mix you up, just tell me.

16                  Do you suffer from any mental condition or take  
17 any drugs that might interfere with your ability to  
18 understand what we're doing this morning?

19                  Mr. Savell?

20                  DEFENDANT SAVELL: No, sir.

21                  DEFENDANT BELL: No, sir.

22                  THE COURT: No. Mr. Bell, no.

23                  How old are you, Mr. Savell?

24                  DEFENDANT SAVELL: Nineteen.

25                  THE COURT: Nineteen years old. How old --

1 How far did you get in school?

2 DEFENDANT SAVELL: I got a GED. (Microphone  
3 noise.) I got my GED.

4 THE COURT: Yeah. Just get up a little  
5 closer.

6 You have your GE -- You have your equivalency?

7 DEFENDANT SAVELL: Yes, sir.

8 THE COURT: Okay. Mr. Bell, how old are  
9 you?

10 DEFENDANT BELL: I'm twenty years old.

11 THE COURT: Twenty. And you got through  
12 what in school?

13 DEFENDANT BELL: I got my high school  
14 diploma.

15 THE COURT: Okay. Before accepting your  
16 guilty pleas, there are several rights I'm going to  
17 advise you of and there are lots of questions I'm  
18 going to ask you. We're going to be here for 15, 20  
19 minutes or so, or maybe a little longer. We're just  
20 going to get through this slowly and make sure you  
21 understand what's happening this morning, and what  
22 you're doing. Okay?

23 If you don't understand any rights that I give  
24 you, or advise you of, or questions, or at any time  
25 you wish to consult with your attorney, just raise

1 your hand, we'll stop, and you can talk to your  
2 attorney.

3 If any statement you make during this hearing is  
4 untrue, however, now that you've raised your hand and  
5 taken an oath to tell the truth, if anything's untrue,  
6 then the Government can prosecute you for perjury or  
7 false statement.

8 Do you understand, Mr. Savell?

9 DEFENDANT SAVELL: Yes, sir.

10 THE COURT: Yes.

11 And Mr. Bell?

12 DEFENDANT BELL: Yes, sir.

13 THE COURT: Yes.

14 You both have the right to enter your guilty plea  
15 before the United States District Court. You may,  
16 however, consent to have me, a United States  
17 Magistrate Judge, take your plea. The District Court  
18 will sentence you, I will not, but...

19 Do you understand you have a right to enter your  
20 guilty plea before the District Court, Mr. Savell?

21 DEFENDANT SAVELL: Yes, sir.

22 THE COURT: Yes.

23 And do you waive that right and agree to plead  
24 guilty before me, a U.S. Magistrate Judge, today?

25 DEFENDANT SAVELL: Yes, sir.

1                   THE COURT: Okay. Yes.

2                   Mr. Bell, do you understand your right to plead  
3                   guilty before the United States District Court?

4                   DEFENDANT BELL: Yes, sir.

5                   THE COURT: And do you give up that right  
6                   and plead guilty before a Magistrate Judge today?

7                   DEFENDANT BELL: Yes, sir.

8                   THE COURT: Yes.

9                   To each of you, I ask you, have you had enough  
10                  time to fully discuss your case with your attorney,  
11                  and any possible defenses you may have to the charges  
12                  against you?

13                  Mr. Savell?

14                  DEFENDANT SAVELL: Yes, sir.

15                  THE COURT: Yes.

16                  Mr. Bell?

17                  DEFENDANT BELL: Yes, sir.

18                  THE COURT: Okay. To the attorneys,  
19                  Mr. Rogers and Mr. Leach, do you also believe you've  
20                  had sufficient time with your client to fully discuss  
21                  the case and any possible defenses that you may have?

22                  Mr. Rogers?

23                  MR. ROGERS: Yes, your Honor.

24                  THE COURT: Yes.

25                  Mr. Leach?

1 MR. LEACH: I have.

2 THE COURT: Thank you.

3 To the Defendants, I'd ask you, are you satisfied  
4 with your attorney's representation of you?

5 Mr. Savell?

6 DEFENDANT SAVELL: Yes, sir.

7 THE COURT: Yes.

8 Mr. Bell?

9 DEFENDANT BELL: Yes, sir.

10 THE COURT: Okay. There's no written plea  
11 agreement in this; we're going to do it without a plea  
12 agreement. Correct?

13 MS. YOUNG: That's correct, your Honor.

14 THE COURT: All right.

15 MR. ROGERS: Yes, your Honor.

16 THE COURT: All right. You're charged --  
17 Mr. Savell and Mr. Bell, all three -- both of you  
18 are charged in all three counts of this indictment,  
19 Count 1, 2 and 3.

20 I tell you what let's do. I'm going to ask  
21 Ms. Young, as painful as it may be, would you read  
22 this indictment for the record.

23 And make sure you listen, Mr. Savell and  
24 Mr. Bell. I know you've been over this, but let's  
25 listen to it one more time.

1 MS. YOUNG: Yes, your Honor.

2 The United States of America versus Joshua Bell  
3 and Preston Savell, Defendants.

4 The Grand Jury charges, in Count 1, that on or  
5 about June 4th, 2009, in the Western District of  
6 Texas, the Defendants Joshua Bell, Christopher Simmons  
7 and Preston Savell, aided and abetted by each other,  
8 by force, violence or intimidation, did attempt to  
9 take from the person and presence of another an amount  
10 of United States currency belonging to and in the  
11 care, custody, control, management and possession  
12 of Western National Bank, a federally insured  
13 financial -- financial institution, and other  
14 federally insured financial institutions; and in  
15 committing such offense, the Defendants did assault  
16 and put in jeopardy the life of another person by the  
17 use of a dangerous weapon, that is a firearm, in  
18 violation of Title 18, United States Code, Sections  
19 2113(a) and 2113(d), and Title 18, United States Code,  
20 Section 2.

21 Count 2. That from on or about March 1st, 2009,  
22 to on or about June 4th, 2009, in the Western District  
23 of Texas, the Defendants Joshua Bell, Christopher  
24 Simmons and Preston Savell conspired, confederated  
25 and agreed together and with each other, by force,

1 violence or intimidation, to take from the person and  
2 presence of another an amount of United States  
3 currency belonging to and in the care, custody,  
4 control, management and possession of Western National  
5 Bank, a federally insured financial institution, and  
6 other federally insured financial institutions, in  
7 violation of Title 18, United States Code, Section  
8 2113(a), and Title 18, United States Code, Section  
9 371.

10 Overt acts. In furtherance of the conspiracy  
11 and to achieve the objective thereof, the Defendants  
12 committed the following acts:

13 1. Defendants Joshua Bell, Christopher Simmons  
14 and Preston Savell drove to the Western National Bank  
15 in Odessa, Texas, on June 4th, 2009, in Simmons'  
16 vehicle.

17 2. When an H&K Armored Services van arrived at  
18 the Western National Bank carrying United States  
19 currency, Defendants Joshua Bell and Preston Savell  
20 exited Simmons' vehicle, each armed with a firearm,  
21 and approached the guards. Defendant Christopher  
22 Simmons remained in his vehicle as the getaway driver.

23 3. Defendants Joshua Bell and Preston Savell  
24 began shooting at the guards, wounding one of them  
25 four times.

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1           4. Defendant Christopher Simmons picked up  
2 Defendants Joshua Bell and Preston Savell and drove  
3 them back to Defendant Simmons' house.

4           Count 3. On or about June 4th, 2009, in the  
5 Western District of Texas, the Defendants Joshua Bell,  
6 Christopher Simmons and Preston Savell, aided and  
7 abetted by each other, used, carried and discharged  
8 firearms during and in relation to the crimes of  
9 violence as set forth in Counts 1 and 2 of this  
10 indictment, which are hereby incorporated by reference  
11 as set forth in full, all in violation of Title 18,  
12 United States Code, Section 924(c), Title 18, United  
13 States Code, Section 2, and *Pinkerton versus United  
14 States*, 328 U.S. 640 (1946) (Pinkerton liability).

15           Signed by the Foreman of the Grand Jury.

16           THE COURT: Thank you, Ms. Young.

17           Did each of you receive a copy of the indictment  
18 that has been filed against you and that was just read  
19 to you in Court?

20           Mr. Savell?

21           DEFENDANT SAVELL: Yes, sir.

22           THE COURT: Did you read it when you  
23 received the copy of it?

24           DEFENDANT SAVELL: Yes, sir.

25           THE COURT: Did you go over it with your

1 attorney?

2 DEFENDANT SAVELL: Yes, sir.

3 THE COURT: And do you understand the  
4 charges against you?

5 DEFENDANT SAVELL: Yes, sir.

6 THE COURT: Mr. Bell, did you receive a copy  
7 of the indictment?

8 DEFENDANT SAVELL: Yes, sir.

9 THE COURT: Okay. And were you able to read  
10 it and talk about it with your attorney?

11 DEFENDANT BELL: Yes, sir.

12 THE COURT: And we've read it here today,  
13 and you understand what you're charged with?

14 DEFENDANT BELL: Yes, sir.

15 THE COURT: And you understand what you're  
16 charged -- You understand, both of you, that this  
17 indictment's merely a charge, it's merely a claim that  
18 the Government has made through the Grand Jury as to  
19 what you did and how you violated the law.

20 Do you understand, Mr. Savell?

21 DEFENDANT SAVELL: Yes, sir.

22 THE COURT: Mr. Bell?

23 DEFENDANT BELL: Yes, sir.

24 THE COURT: All right. Do each of you  
25 understand the charges?

1 Mr. Savell?

2 DEFENDANT SAVELL: Yes, sir.

3 THE COURT: Yes.

4 And Mr. Bell?

5 DEFENDANT BELL: Yes, sir.

6 THE COURT: All right. Mr. Savell, how do  
7 you plead to Count 1 of the indictment against you,  
8 guilty or not guilty?

9 DEFENDANT SAVELL: Guilty.

10 THE COURT: How do you plead to Count 2,  
11 guilty or not guilty?

12 DEFENDANT SAVELL: Guilty.

13 THE COURT: How do you plead to Count 3 of  
14 the indictment, guilty or not guilty?

15 DEFENDANT SAVELL: Guilty.

16 THE COURT: Mr. Bell, how do you plead to  
17 Count 1 of the indictment against you, --

18 DEFENDANT BELL: Guilty.

19 THE COURT: -- guilty or not guilty?

20 Guilty?

21 DEFENDANT BELL: Guilty.

22 THE COURT: Count 2?

23 DEFENDANT BELL: Guilty.

24 THE COURT: And how do you plead to Count  
25 3, guilty or not guilty?

1 DEFENDANT BELL: Guilty.

2 THE COURT: Guilty.

3 Under the Constitution of the -- and the laws of  
4 the United States, you have the right to a trial by  
5 jury, you have a right to assistance of these fine  
6 attorneys during that trial, you have the right to  
7 confront and cross-examine witnesses that the  
8 Government brings against you, you have the right to  
9 compel the attendance of other witnesses at trial, and  
10 you have the right to present evidence on your own  
11 behalf.

12 Do you understand, Mr. Savell?

13 DEFENDANT SAVELL: Yes, sir.

14 THE COURT: Mr. Bell, do you understand  
15 those rights?

16 DEFENDANT BELL: Yes, sir.

17 THE COURT: Okay. You're presumed to be  
18 innocent, and the Government is required to prove your  
19 guilt beyond a reasonable doubt before you could be  
20 found guilty at trial. At a trial, while you would  
21 have the right to testify, if you chose not to testify  
22 that could not and would not be held against you. You  
23 could not be required to testify.

24 Do you understand, Mr. Savell?

25 DEFENDANT SAVELL: Yes, sir.

1                   THE COURT: Mr. Bell, do you understand?

2                   DEFENDANT BELL: Yes, sir.

3                   THE COURT: All right. If you plead guilty  
4 and continue -- persist with your guilty pleas to  
5 these three counts, you'll give up your right to a  
6 trial, you'll give up the other rights, except for  
7 your rights to be represented by these attorneys.

8 Any -- You'll give up any defenses that you may have  
9 to the charge, or any defenses you may think you have  
10 to the charges. The District Court will sentence you  
11 after considering a presentence report.

12                  Do you understand, Mr. Savell?

13                  DEFENDANT SAVELL: Yes, sir.

14                  THE COURT: Yes.

15                  Mr. Bell?

16                  DEFENDANT BELL: Yes, sir.

17                  THE COURT: Yes.

18                  Do you agree to give up your rights to plead --  
19 persist in your guilty pleas to these charges that  
20 we've discussed today?

21                  Mr. Savell?

22                  DEFENDANT SAVELL: Yes, sir.

23                  THE COURT: Yes.

24                  And Mr. Bell?

25                  DEFENDANT BELL: Yes, sir.

1                   THE COURT: Are you pleading guilty because  
2 you are guilty and for no other reason?

3                   Mr. Savell?

4                   DEFENDANT SAVELL: Yes, sir.

5                   THE COURT: Yes.

6                   And Mr. Bell?

7                   DEFENDANT BELL: Yes, sir.

8                   THE COURT: Let's talk about the penalties  
9 you face on these charges.

10                  And check me on this, Ms. Young. Make sure that  
11 I tell them correctly.

12                  On Count 1, you are looking at a -- statutorily,  
13 a term of imprisonment of up to 25 years, up to  
14 five years supervised release upon release from  
15 incarceration, up to a \$250,000 fine, and a \$100  
16 special assessment pursuant to the Victims of Crime  
17 Act.

18                  In Count 2, you face up to five years  
19 imprisonment, up to three years supervised release,  
20 up to a \$250,000 fine, and a \$100 -- yes, special  
21 assessment.

22                  And on Count 3, you face a minimum mandatory ten  
23 years up to life in prison, to run consecutive to any  
24 other prison sentence you get on Count 1 or 2. You  
25 face up to five years of supervised release upon

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1 release of imprisonment, up to a \$250,000 fine, and a  
2 \$100 special assessment.

3 Do you agree with all that, Ms. Young?

4 MS. YOUNG: Yes, your Honor.

5 THE COURT: Mr. Savell, do you understand  
6 the penalties, the maximum possible penalties you  
7 face?

8 DEFENDANT SAVELL: Yes, sir.

9 THE COURT: And do you understand that the  
10 Court -- the District Court will not have any option  
11 but to sentence you to a consecutive term of a minimum  
12 mandatory ten on that Count 3?

13 DEFENDANT SAVELL: Yes, sir.

14 THE COURT: Up to possibly life in prison?

15 DEFENDANT SAVELL: Yes, sir.

16 THE COURT: Mr. Bell, do you understand the  
17 possible -- maximum possible penalties you -- you  
18 face?

19 DEFENDANT BELL: Yes, sir.

20 THE COURT: And you understand, likewise,  
21 that the District Court does not have any discretion  
22 to sentence you other than to a consecutive minimum  
23 mandatory term of ten years, and up to possibly life,  
24 on Count 3, consecutive to any sentence you may  
25 receive in Counts 1 and 2?

1 DEFENDANT BELL: Yes, sir.

2 THE COURT: All right. Ms. Young, is there  
3 any restitution in the case?

4 MS. YOUNG: There may be, your Honor. I  
5 don't have a restitution amount at this time.

6 THE COURT: Okay. Gentlemen, if you --  
7 between now and sentencing, we'll determine whether  
8 or not there's a restitution amount, and your  
9 attorneys will have a chance to discuss that with  
10 the Government and see if you can come to an  
11 agreement. If an agreement --

12 Do you have something else?

13 MS. YOUNG: No. Just to put on the record,  
14 to clarify why I do anticipate some restitution, it's  
15 because of medical care that --

16 THE COURT: Right.

17 MS. YOUNG: -- by the victim. And so those  
18 amounts, we just don't know them yet. But it is for  
19 medical care, if there was a question of what the  
20 restitution is for.

21 THE COURT: So, there may be an amount that  
22 you can agree to, or there may be an amount that can  
23 be litigated to the District Court.

24 Do you understand, Mr. Savell?

25 DEFENDANT SAVELL: Yes, sir.

1                   THE COURT: Okay. And do you understand,  
2 Mr. Bell?

3                   DEFENDANT BELL: Yes, sir.

4                   THE COURT: Okay. And that'll be in  
5 addition to any fine that may be imposed. That'll be  
6 in addition to these \$100 per count assessments that  
7 I've talked to you about.

8                   Do you understand that, Mr. Savell?

9                   DEFENDANT SAVELL: Yes, sir.

10                  THE COURT: Mr. Bell, do you understand?

11                  DEFENDANT BELL: Yes, sir.

12                  THE COURT: Okay. The District Court will  
13 impose a sentence after considering guidelines  
14 established by the United States Sentencing  
15 Commission. A range of punishment will be determined  
16 considering such things as the nature and  
17 circumstances of the offense, your participation and  
18 conduct in that offense, and any criminal history you  
19 may have. However, the sentencing guidelines that  
20 will be what we will call applicable to your case are  
21 merely advisory, and the District Court is not  
22 required to sentence you within that applicable  
23 guideline range. He can sentence you to any  
24 reasonable term between the minimum and maximum  
25 statutory penalty.

1 Do you understand that, Mr. Savell?

2 DEFENDANT SAVELL: Yes, sir.

3 THE COURT: You do.

4 Mr. Bell?

5 DEFENDANT BELL: Yes, sir.

6 THE COURT: Okay. Do you understand that  
7 the sentencing -- Well...

8 Do you understand that even -- The District  
9 Court -- And we've talked about running consecutively.

10 Mr. Savell, do you understand what it means to  
11 run a sentence consecutively to another sentence?

12 DEFENDANT SAVELL: Yes, sir.

13 THE COURT: Okay. Stack it? Run it -- Run  
14 it thereafter?

15 DEFENDANT SAVELL: Yes, sir.

16 THE COURT: Yes, Mr. Savell.

17 Mr. Bell, do you understand that?

18 DEFENDANT BELL: Yes, sir.

19 THE COURT: All right. Do you understand  
20 that your attorney and the attorney for the Government  
21 may make guesses at predicting your guidelines, or  
22 even your eventual sentence, and they may get really  
23 close, but that no one can predict what sentence you  
24 may get with any accuracy.

25 Do you understand that, Mr. Savell?

1 DEFENDANT SAVELL: Yes, sir.

2 THE COURT: Yes.

3 Mr. Bell, yes?

4 DEFENDANT BELL: Yes, sir.

5 THE COURT: All right. Ms. Young, is there  
6 any forfeiture with the -- No? No forfeiture?

7 MS. YOUNG: No, your Honor.

8 THE COURT: For the offense to which --  
9 offenses to which you're pleading guilty, you've heard  
10 us talk about this term of supervised release that  
11 will be assessed to you. Supervised release is served  
12 after completing your initial term of confinement.  
13 While on supervised release -- And this -- this will  
14 be years, you know, from now. But while you're on  
15 supervised release, you'll be required to comply with  
16 various conditions. Failure to comply with any of  
17 those conditions could well result in revocation of  
18 your supervised release and additional -- an  
19 imposition of an additional term of confinement.

20 Do you understand, Mr. Savell?

21 DEFENDANT SAVELL: Yes, sir.

22 THE COURT: Yes.

23 Mr. Bell, do you understand that?

24 DEFENDANT BELL: Yes, sir.

25 THE COURT: Yes.

1                   Are you pleading guilty freely and voluntarily,  
2 and with full knowledge of the consequences,  
3 Mr. Savell?

4                   DEFENDANT SAVELL: Yes, sir.

5                   THE COURT: Mr. Bell?

6                   DEFENDANT BELL: Yes, sir.

7                   THE COURT: Has anyone threatened you,  
8 coerced you or forced you in way to plead guilty,  
9 Mr. Savell?

10                  DEFENDANT SAVELL: No, sir.

11                  THE COURT: No.

12                  Mr. Bell?

13                  DEFENDANT BELL: No, sir.

14                  THE COURT: No.

15                  Has anyone made any promise to you that caused  
16 you to plead guilty today?

17                  Mr. Savell?

18                  DEFENDANT SAVELL: No, sir.

19                  THE COURT: Mr. Bell?

20                  DEFENDANT BELL: No, sir.

21                  THE COURT: No.

22                  Has anyone made any promise to you as to what  
23 sentence you will receive?

24                  Mr. Savell?

25                  DEFENDANT SAVELL: No, sir.

1                   THE COURT: Mr. Bell?

2                   DEFENDANT BELL: No, sir.

3                   THE COURT: No.

4                   I don't know what -- Since there's no plea  
5                   agreement, I don't know what recommendations may or  
6                   may not be made by the Government at sentencing.  
7                   There may be some recommendations, there may not be.  
8                   What you need to know is, if -- even if there are  
9                   recommendations from the Government, those will not be  
10                   binding on the Court; the Court will consider them and  
11                   may -- may agree with them. But even if the Court  
12                   does not accept those recommendations from the  
13                   Government, you will not have a right to withdraw your  
14                   plea.

15                   Do you understand, Mr. Savell?

16                   DEFENDANT SAVELL: Yes, sir.

17                   THE COURT: Yes.

18                   Mr. Bell, do you understand that?

19                   DEFENDANT BELL: Yes, sir.

20                   THE COURT: Okay. And both of you  
21                   understand also that, if the Court chooses not to  
22                   sentence you within the applicable guideline range,  
23                   but he does still sentence you within his minimum and  
24                   maximum statutory range that we've talked about, that  
25                   you will not have a right to withdraw your plea at

1 that point either.

2 Do you understand, Mr. Savell?

3 DEFENDANT SAVELL: Yes, sir.

4 THE COURT: Yes.

5 Mr. Bell, do you understand?

6 DEFENDANT BELL: Yes, sir.

7 THE COURT: All right. So, if the Court  
8 were to decide that, you know, this -- the guidelines  
9 just aren't enough, I'm going to go up from there, as  
10 long as he stays within that statutory maximum, you  
11 don't have a right to withdraw your plea.

12 Mr. Savell, do you understand that?

13 DEFENDANT BELL: Yes, sir.

14 THE COURT: Yes.

15 Mr. Bell?

16 DEFENDANT BELL: Yes, sir.

17 THE COURT: All right. Let's talk about the  
18 legal elements of the offenses to which you're  
19 pleading guilty.

20 In Counts 1 and 2, Count 1 you're -- you're  
21 charged and pleading guilty to aiding and abetting  
22 each other and another with an attempted bank robbery.  
23 In Count 2, you're charged with a conspiracy, Count 2  
24 being just the agreement to do what you've attempted  
25 to do, I guess, in Count 1.

1           Bank robbery, the legal elements of bank robbery  
2    is that the defendant intentionally took from the  
3    person or the presence of the person money or  
4    property; second, that the money or property belonged  
5    to or was in possession of a federally insured bank at  
6    the time of the taking; three, that the defendant took  
7    the money or property by means of force and violence,  
8    or by means of intimidation; and fourth, that the  
9    defendant assaulted that -- some person, put in  
10   jeopardy that -- in jeopardy the life of some person  
11   by the use of a dangerous weapon or device while  
12   engaged in taking the money or property.

13           As for the -- Count 3, the 924(c), using,  
14    carrying and discharging a firearm during commission  
15    of a crime of violence, the legal elements would be  
16    that the defendant committed the crime alleged in  
17    Counts 1 or 2; that that crime is a crime of violence;  
18    and second, that the defendant/defendants knowingly  
19    used, carried or discharged the firearm during and in  
20    relation to the crime of violence alleged in Counts 1  
21    or 2.

22           Mr. Savell, do you understand the legal elements  
23    which these offense would require -- be required to be  
24    proved?

25           DEFENDANT SAVELL: Yes, sir.

1                   THE COURT: Mr. Bell, do you understand  
2 the legal elements of the offenses to which you're  
3 pleading guilty?

4                   DEFENDANT BELL: Yes.

5                   THE COURT: Do we have a factual basis for  
6 the guilty plea, Ms. Young?

7                   MS. YOUNG: The attorneys are prepared to  
8 present one to the Court.

9                   THE COURT: All right. Is this one that the  
10 Government agrees with, or just...

11                  MS. YOUNG: We will ask, as -- Upon the  
12 conclusion of their oral presentation, --

13                  THE COURT: Okay.

14                  MS. YOUNG: -- if we believe anything  
15 necessary is to be added, we will present to the Court  
16 at the end, your Honor.

17                  THE COURT: All right. Mr. Rogers, are  
18 you --

19                  MR. ROGERS: Your Honor, as part of a  
20 factual basis, we believe and agree to these facts.  
21 That on or about June 4th, 2009, all in the Western  
22 District of Texas, that Mr. Savell attempted to  
23 intentionally take from a person money; that the money  
24 or property belonged to or was in the possession of a  
25 federally insured bank at the time of taking; that the

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1      Defendant attempted to take money by means of force or  
2      violence; and that Mr. Savell assaulted some person or  
3      put that person in jeopardy of life (sic) by the use  
4      of a dangerous weapon or device while engaged in the  
5      taking of that money. That device would have been a  
6      rifle, I think the Government would have been -- would  
7      have proved. And that would be our factual basis to  
8      Count 1.

9                   Do you want me to talk about each count, Judge,  
10                   or do you want...

11                   THE COURT: Let me ask the Government.

12                   Do you agree with -- with that, or would you  
13                   add anything to that factual basis, Ms. Young?

14                   MS. YOUNG: With the addition that the  
15                   firearm was actually discharged, your Honor.

16                   THE COURT: Mr. Rogers?

17                   MR. ROGERS: Yes, sir.

18                   THE COURT: Okay. Go ahead to Count 2,  
19                   then.

20                   MR. ROGERS: We believe that, on the same  
21                   date, that the Government would able to (sic) -- would  
22                   be able to prove that Bell, Simmons and Savell made an  
23                   agreement to commit the crime of bank robbery, as  
24                   alleged in the indictment; that all three planned it  
25                   out, each knew what the other party was going to do.

1 The Defendant knew the unlawful purpose of the  
2 agreement, and he joined it willfully. It was his  
3 intent to commit bank robbery on that day.

4 During the conspiracy, they committed at least  
5 one of the overt acts alleged in the indictment;  
6 specifically, they drove to the bank. Each -- Or two  
7 of them, Mr. -- Two of them were armed with firearms;  
8 specifically, Mr. Savell was armed with a firearm.  
9 Your Honor, I don't think we're here to talk about who  
10 shot first. But Mr. Savell did shoot at the bank  
11 guard, and one of his shots probably wounded him. And  
12 then the Government would be able to prove that  
13 Christopher Simmons picked up Bell and Savell and  
14 drove them back to Simmons' home. And that would be  
15 our factual basis for Count 2.

16 THE COURT: Ms. Young?

17 MS. YOUNG: We agree with that factual  
18 basis, in addition that, as Mr. Rogers stated, the  
19 purpose of the conspiracy was to commit the bank  
20 robbery, and that those elements have been satisfied,  
21 as in Count 1.

22 THE COURT: Okay. Mr. Rogers, Count 3?

23 MR. ROGERS: On Count 3, your Honor, which  
24 is the 924(c) count, we have agreed that the Defendant  
25 in this case committed bank robbery and the conspiracy

1 to commit bank robbery; that would be a crime of  
2 violence; and he knowingly used a firearm--that  
3 firearm was a rifle--in relation to the bank robbery;  
4 and that the firearm was discharged and used in  
5 relation to the bank robbery.

6 THE COURT: Ms. Young?

7 MS. YOUNG: We agree with that factual  
8 basis, your Honor.

9 THE COURT: And you'd agree that all -- all  
10 three of these counts occurred in the Western District  
11 of Texas?

12 MR. ROGERS: Yes, your Honor.

13 THE COURT: Mr. Leach -- excuse me -- Leach?

14 MR. LEACH: Yes, sir.

15 THE COURT: Do you -- Do you --

16 MR. LEACH: Do you want me to recite --

17 THE COURT: Well, do you agree with --  
18 with --

19 MR. LEACH: I'd agree --

20 THE COURT: And let me just clarify. When  
21 Mr. Rogers mentions the Defendant, as opposed to your  
22 client, you're talking about Mr. Savell?

23 MR. ROGERS: Yes, your Honor.

24 THE COURT: Okay. Just for the --  
25 Mr. Leach, go ahead.

1 MR. LEACH: I would agree with the statement  
2 of facts that Mr. Rogers proffered, to the extent that  
3 you could interchange Mr. Bell's name with  
4 Mr. Savell's name. To the extent that we'd say a  
5 firearm, whether it was a rifle or pistol, I'm --  
6 I'm not sure it matters. I'd agree that all of this  
7 happened on or about June 4th in the Western District  
8 of Texas. I'd agree that the Government can prove  
9 each of these elements, based upon the factual basis  
10 that Mr. Rogers recited and that we adopt, and that  
11 the Government could prove that beyond a reasonable  
12 doubt. And I believe my client would so agree, your  
13 Honor.

18 DEFENDANT SAVELL: Yes, sir.

19 THE COURT: And, Mr. Bell, do you agree?

20 DEFENDANT BELL: Yes, sir.

24 MS. YOUNG: No, your Honor.

25 THE COURT: All right. Now that we've read

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1 the indictment--Ms. Young did--the factual basis has  
2 been -- has been discussed, you've agreed to that  
3 factual basis, I've explained the legal elements to  
4 you, you've told me that you understand them, I want  
5 to ask you again if you understand the nature of the  
6 charge against you, the charges against you.

7 Do you understand, Mr. Savell?

8 DEFENDANT SAVELL: Yes, sir.

9 THE COURT: Mr. Bell, do you understand?

10 DEFENDANT BELL: Yes, sir.

11 THE COURT: All right. Before you could  
12 be found guilty at trial, the Government would be  
13 required to establish the legal elements and prove the  
14 facts of the case, the facts -- that factual basis we  
15 just discussed, to the -- to the satisfaction of a  
16 jury or a judge beyond a reasonable doubt.

17 Do you understand that, Mr. Savell?

18 DEFENDANT SAVELL: Yes, sir.

19 THE COURT: Mr. Bell, do you understand?

20 DEFENDANT BELL: Yes, sir.

21 THE COURT: Do you have any questions  
22 about the charges against you or the factual basis,  
23 Mr. Savell?

24 DEFENDANT SAVELL: No, sir.

25 THE COURT: Mr. Bell?

1 DEFENDANT BELL: No, sir.

2 THE COURT: No.

3 Having now gone through the plea agreement --

4 Well, there's actually no written plea agreement. But  
5 we've gone through your rights, we've talked about the  
6 charges, we've talked about the possible penalties,  
7 we've talked about what the Court -- the District  
8 Court will do at sentencing, that no one can predict  
9 your sentence, but also that the District Court will  
10 not have discretion on some of the matters, you  
11 understand that.

12 Is it still your desire to plead guilty to these  
13 charges, Mr. Savell?

14 DEFENDANT SAVELL: Yes, sir.

15 THE COURT: Yes.

16 DEFENDANT BELL: Yes.

17 THE COURT: Mr. Bell, yes.

18 Do you understand if you go to a jury trial, if  
19 you elect to have a jury trial, that a jury might find  
20 you not guilty?

21 Do you understand, Mr. Savell?

22 DEFENDANT SAVELL: Yes, sir.

23 THE COURT: Mr. Bell, do you understand  
24 that?

25 DEFENDANT BELL: Yes.

1                   THE COURT: Yes.

2                   Is there anything we've talked about here today  
3                   that you would -- that you don't understand or that  
4                   you want to discuss with your attorney?

5                   Mr. Savell?

6                   DEFENDANT SAVELL: No, sir.

7                   THE COURT: No.

8                   Mr. Bell?

9                   DEFENDANT BELL: No, sir.

10                  THE COURT: The Court finds that the  
11                  Defendants are competent to stand trial, the  
12                  Defendants fully understand the nature of the charges  
13                  and the penalties, the Defendants understand their  
14                  Constitutional and statutory rights and desire to  
15                  waive them, the Defendants' pleas are freely,  
16                  knowingly and voluntarily made, and that there is a  
17                  factual basis that supports the plea. I'll recommend  
18                  to the District Court that your guilty pleas be  
19                  accepted and a judgment of guilt be entered against  
20                  you on all three counts of this indictment.

21                  The case will now be referred to the probation  
22                  office. They will put together a report for  
23                  consideration by the District Court. You'll have a  
24                  chance to view that before sentencing. You'll have a  
25                  chance to go through it with your attorneys, and

1 discuss any errors that are in there, any  
2 clarifications you would like made. You'll have an  
3 opportunity to make -- to file timely objections so  
4 that those objections can be litigated at sentencing.

5 Do you understand, Mr. Savell?

6 DEFENDANT SAVELL: Yes, sir.

7 THE COURT: Mr. Bell, do you understand  
8 that?

9 DEFENDANT BELL: Yes, sir.

10 THE COURT: All right. Let me ask you one  
11 more time. Is there anything that you don't  
12 understand or you'd like to change about what we've  
13 done today, anything at all?

14 Mr. Savell?

15 DEFENDANT SAVELL: No, sir.

16 THE COURT: No.

17 Mr. Bell?

18 DEFENDANT BELL: No, sir.

19 THE COURT: All right. Anything from  
20 Mr. Leach?

21 MR. LEACH: May I speak to Mr. Rogers for  
22 one moment, Judge?

23 THE COURT: Sure. Absolutely.

24 (Pause.)

25 MR. LEACH: Your Honor, if I could, for just

1 a second?

2 THE COURT: Yes, sir.

3 MR. LEACH: I don't think it's an issue  
4 for this Court to rule on, but just for purposes of  
5 preserving the record for Mr. Bell, we are going to  
6 contend that Mr. Bell should receive acceptance of  
7 responsibility for -- for the entry of this plea. I  
8 know that's an issue at sentencing, but I wanted to  
9 get that out.

10 Also, Judge, other than the way that the Court  
11 has confirmed with Mr. Bell those rights that he's  
12 waiving, or those -- for example, withdrawing his  
13 plea, or anything of that nature, other than the  
14 rights that Mr. Bell has waived today, he's preserving  
15 all those other rights, absent an agreement with the  
16 Government.

17 THE COURT: I understand.

18 MR. LEACH: Thank you.

19 THE COURT: Mr. Rogers, you want to...

20 MR. ROGERS: And, your Honor, we'd adopt  
21 Mr. Leach's arguments on behalf of Mr. Savell.

22 One thing I do want to make clear. When we  
23 calculated the guidelines, you know, my client came  
24 out at maybe a Level 28 to 25, somewhere in that  
25 range; might put him in jail for fourteen to eighteen

1 years, somewhere in that range. I know we talk about  
2 what he expects to get, and the Judge could upwardly  
3 depart. He's pleading today knowing there's a strong,  
4 strong, strong possibility there will be an upward  
5 departure. And I just wanted to put that on the  
6 record that we've discussed that, and I believe he's  
7 not going to get a guideline sentence, but up from  
8 what I've told him the guidelines are.

9 THE COURT: Mr. Savell, do you understand  
10 what Mr. Rogers is saying?

11 DEFENDANT SAVELL: Yes, sir.

12 THE COURT: Okay. Do you agree with what  
13 he's saying?

14 DEFENDANT SAVELL: Yes, sir.

15 THE COURT: Okay. I might ask Mr. Bell the  
16 same thing, if you and Mr. Leach have discussed this,  
17 as well?

18 DEFENDANT BELL: Yes, sir.

19 THE COURT: Okay. And do you understand?

20 DEFENDANT BELL: Yes, sir.

21 THE COURT: Okay. Neither of you wants to  
22 change your plea now?

23 DEFENDANT BELL: No, sir.

24 DEFENDANT SAVELL: No, sir.

25 THE COURT: No. No. Okay.

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1                   Ms. Young, anything from the Government on that,  
2 on what we've just discussed?

3                   MS. YOUNG: No, your Honor. Other than  
4 Mr. Rogers and Mr. Leach have been in constant contact  
5 with the U.S. Attorney's office, up until the late  
6 afternoon hours of yesterday afternoon. So, as far as  
7 regarding acceptance, and those things, although  
8 they're not for this Court, we have no dog in that  
9 fight, as sometimes is said. However, we would put on  
10 the record that they have been working, I mean, up  
11 until through -- from the day they got this case  
12 through yesterday, late afternoon.

13                   THE COURT: Certainly. And that's apparent.  
14 Thank you.

15                   Then you'll be notified of your sentencing date,  
16 and you'll be remanded to the custody of the Marshals.

17                   Good luck.

18                   MR. LEACH: Thank you, Judge.

19                   THE COURT: Thank you, Mr. Leach.  
20 Thank you, Mr. Rogers.

21                   Ms. Young, thank you.

22

23                   (Other matters taken up.)

24

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1 I, Court approved transcriber, certify that the  
2 foregoing is a correct transcript from the official  
3 electronic sound recording of the proceedings in the  
4 above-entitled matter.

5  
6  
7 /s/ Darla Messina January 8, 2010  
8 Signature of Approved Transcriber Date  
9

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